

the Requirement as a Restriction Requirement and does not continue to examine additional species should the Examiner find the elected species allowable.

This Amendment adds two new claims that are directed to the elected composition, and have support in the original claims and in Table 5 (see combination A1.2 and B2.4), wherein data demonstrating synergy are reported. Claims 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 read upon the elected composition.

Applicants note that in Paper No. 13 the Examiner indicated that the Synergistic combination comprising glufosinate and cycloxydim is allowable. It is presumed that this combination is still allowable.

It is believed that no other fee is required for the consideration of this Amendment. However, if a fee is required, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment, against Deposit Account No. 50-0320.

Applicants respectfully urge that a Restriction Requirement to limit the claims to the elected species would be improper as it does not establish that searching all the species constitutes an undue burden to the Office and it is contrary to public policy. Accordingly, modification or withdrawal of this Requirement is respectfully requested.

The MPEP lists two criteria for a proper Restriction Requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ...even though it includes claims to distinct or independent inventions.” *Id.*

Applicants respectfully urge that the Requirement does not meet this second criteria since the claimed combinations contain group A compounds, which are closely related and are used in a similar way. In the present invention, the claimed herbicidal combinations have component A in common which are normally non-selective herbicide for which the crop plants have been made specifically tolerant through genetic engineering or mutant selection methods. Similarly, group B compounds have common properties. Specifically, group B compounds can be used selectively against weeds in cotton and at the same time produce synergistic herbicidal effects against the weeds typically occurring in cotton crops. Moreover, the claimed combinations are synergistic combinations of group A compounds and group B compounds and are particularly useful for selective control of weeds in cotton. Therefore, these combinations are closely-related and belong to the same inventive concept of synergistically enhancing the effect of a group A compound by a group B compound to selectively control weeds in cotton crops. Further, the conditions for applying the combinations of group A and group B compounds to cotton crops are also similar. These similarities support Applicants' contention that all the combinations belong to the same inventive concept and should be examined together. Applicants further point out that the claimed combinations, while distinct, are so close in the art that one would want to search all the combinations.

Therefore, Applicants urge that searching all the claimed combinations would not constitute an undue burden as the search on "cotton herbicides" and "cotton herbicide combinations" for selective control of weeds in cotton, will encompass all the claimed combinations. Hence the Restriction Requirement does not establish that searching all the combinations would constitute an undue burden to this Office.

Further, it is respectfully urged that restricting the claims in the manner suggested in the Restriction Requirement will constitute an undue burden to Applicants as well as the public. Hence, it is against public policy. If followed, the Restriction Requirement would require Applicants to file numerous applications directed to various combinations of group A and group B compounds. The cost of prosecuting and maintaining so many patents is unreasonable in view of the fact that the application originally only contains ten claims. In addition, under GATT, the period of exclusivity for any patents which issue from the divisional application is greatly reduced. Similarly, the public is inconvenienced as they will not know whether or not Applicants will file divisional applications to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent applications.

Accordingly, in view of the foregoing, reconsideration and modification of the Requirement for an Election of species is requested and an early action on the merits is earnestly solicited.

Respectfully submitted,

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